

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KAREN J. PHILLIPS
Claimant

VS.

HOMELAND FOOD STORES
Respondent

AND

NATIONAL UNION FIRE INSURANCE CO. of N.Y.
Insurance Carrier

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Docket No. 180,779

ORDER

Claimant appealed from the Award of Administrative Law Judge Jon L. Frobish dated December 4, 1996.

APPEARANCES

Claimant appeared by and through her attorney Lawrence M. Gurney of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney Jeffery R. Brewer of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and that it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issue raised.

Claimant alleges an accidental injury to her left ankle on March 17, 1993, from which a limp developed, causing the development of a low back injury. Respondent acknowledged that claimant suffered personal injury by accident arising out of and in the course of her employment on the date alleged but disputed the nature and extent of the injury alleging that claimant's injury was nothing more than a temporary incident. Respondent further contends that the ongoing treatment to claimant's foot and the resulting aggravation of her low back problem resulted not from the work-related injury but rather from a preexisting physical condition called a calcaneal spur which was found on one of the bones on claimant's left foot. The medical evidence supports respondent's contention.

Both Dr. Rawcliffe and Dr. Schlachter agree the calcaneal spur was the reason for claimant's surgery and altered gait and both agree the calcaneal spur preexisted claimant's date of accident. The Appeals Board finds the incident involving claimant's foot and ankle resulted in no permanent injury. Claimant's complaints about the foot, ankle, and back were all subjective in nature with all of the tests performed on claimant, with the exception of the discovery of the calcaneal spur, being normal.

When facts are in dispute, the Administrative Law Judge is in the enviable position of being able to ascertain the credibility of the witnesses who testify before him. In this instance the Administrative Law Judge was able to observe the testimony of claimant regarding the permanency of her conditions and the origin of those complaints. It seems that the Administrative Law Judge was not swayed by claimant's testimony and found her to be less than credible. The Appeals Board in reviewing the evidence finds that the decision by the Administrative Law Judge to grant claimant medical benefits and temporary compensation only is supported in the record and a denial of permanency in this instance is appropriate.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated December 4, 1996, should be, and is, affirmed in all respects. The claimant, Karen Phillips, is granted an award against

the respondent, Homeland Food Stores, and its insurance carrier, National Union Fire Insurance Co. of New York, for an accidental injury sustained on March 17, 1993. Claimant is entitled to all medical compensation resulting from the injury to her left foot and ankle and any temporary total disability compensation resulting from this accident up to the date of the operation for the calcaneal spur. Claimant is denied compensation for any permanency resulting from this injury.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
Jeffrey R. Brewer, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director